



# STATE OF IOWA

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DEPARTMENT OF NATURAL RESOURCES  
JEFFREY R. VONK, DIRECTOR

August 2, 2005

Name  
Address

Dear New Source Review (NSR) Reform Workgroup Members:

I am sending this letter to the NSR Workgroup members to provide you with an update on the Department's rulemaking activities, and make you aware of a recent court ruling on the federal NSR reform rules.

As you know, the Notice of Intended Action (NOIA) for the Department's NSR reform rules was published in the Iowa Administrative Bulletin on February 16, 2005. Public hearings were held on March 18 and March 23. No comments were presented at the hearings. At the request of EPA Region VII, the Department extended the public comment period to May 2, 2005. We received EPA's written comments, as well as one additional written comment letter, prior to the end of the extended public comment period.

In May and June, the Department and EPA Region VII met to discuss EPA's comments. The Department was in the process of resolving the comments with EPA when the U.S. Appeals Court, District of Columbia, issued a ruling on June 25, 2005, on the many petitions filed against the federal NSR reform rules.

The Court upheld many of the NSR reform provisions, but also vacated and remanded back to EPA some significant components. The Court upheld the Plant-wide Applicability Limits (PALs) provisions, the Baseline Actual Emissions (BAE) test, and the Projected Actual Emissions (PAE) tests. The Court vacated the Clean Unit provisions and the Pollution Control Project (PCP) provisions. The Court remanded back to EPA certain recordkeeping provisions for sources. The full text of the DC Court ruling is available at <http://pacer.cadc.uscourts.gov/docs/common/opinions/200506/02-1387a.pdf>

This Court ruling has serious implications for Iowa's NSR reform rulemaking. The Department has learned that EPA is not approving any NSR reform state implementation plan (SIP) revisions submitted by the states, even those SIP submittals adopting the federal rules by reference. We also learned that EPA has not made a decision on whether to appeal the Court's ruling. According to EPA Region VII, the regional offices have not yet received any guidance from EPA Headquarters on how to proceed.

It should be noted that EPA has not extended the January 2006 deadline for states to submit SIP revisions to adopt the NSR reform rules. However, EPA Region VII staff has

informally indicated to the Department that the SIP submittal deadline will most likely be extended.

The Department has asked EPA Region VII to provide direction and guidance, as soon as possible, on how to proceed with NSR reform. The Department is committed to adopting final NSR reform rules that will be acceptable to EPA, and ultimately approved into Iowa's SIP. This does not appear to be possible at this time.

In light of these recent developments, the Department plans to ask the EPC to terminate the current NSR reform rulemaking. Under the Iowa Administrative Procedures Act, the Department must issue a final rule, or terminate the current NOIA, within 180 days of the last public hearing. This puts the rulemaking deadline at September 23, 2005. The Department will present the Notice of Termination to the EPC meeting in September. Given the imminent procedural deadline for rulemaking, and the current absence of EPA guidance, this is the Department's most logical course of action.

The Department is committed to building on the momentum from the NSR reform Workgroup's considerable efforts and final recommendations. As such, the Department will begin work on a new NOIA as soon as is practicable. Because much of the federal rule appears to have been left intact, we plan to use much of the text already included in the current NOIA. We are hopeful that EPA will soon provide guidance on how we can best accomplish this.

Lastly, it should be noted that the Routine Maintenance, Repair and Replacement (RMRR) provisions of the federal NSR reform rules continue to advance on a separate track. On June 6, 2005, EPA issued its final response to the petitions for review and reconsideration. EPA's response stated that it intended to proceed with RMRR as originally promulgated on October 27, 2003. To date, the court-ordered stay of the RMRR provisions remains in effect.

The Department welcomes your thoughts and suggestions on our planned course of action. If you have questions or would like to offer comments, please contact Christine Paulson of my staff prior to August 15, 2005, at 515 242-5154 or by email at [christine.paulson@dnr.state.ia.us](mailto:christine.paulson@dnr.state.ia.us).

Sincerely,

*James G. McGraw* for

Catharine Fitzsimmons  
Chief, Air Quality Bureau